

**5-RUNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD**

CREATIVE HAIRDRESSERS, INC., d/b/a  
HAIR CUTTERY<sup>1/</sup>

Employer

and

UNITED FOOD AND COMMERCIAL WORKERS  
OF AMERICA, LOCAL 27, AFL-CIO<sup>1/</sup>

Petitioner

**Case 5-RC-14896**

**DECISION AND DIRECTION OF ELECTION**

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, as amended, a hearing was held before a hearing officer of the National Labor Relations Board; hereinafter referred to as the Board.

Pursuant to the provisions of Section 3(b) of the Act, the Board has delegated its authority in this proceeding to the undersigned.

Upon the entire record in this proceeding, the undersigned finds:

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.
2. The Employer is engaged in commerce within the meaning of the Act and it will effectuate the purposes of the Act to assert jurisdiction herein.
3. The Petitioner involved claims to represent certain employees of the Employer.
4. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.
5. The following employees of the Employer constitute a unit appropriate for the purpose of collective bargaining within the meaning of Section 9(b) of the Act:<sup>2/</sup>

All full-time and regular part-time assistant salon leaders, hairstylists, keyholders, manicurists, shampoo persons and receptionists employed by the Employer at its salon located at 6610 Reisterstown Road, Baltimore, Maryland; but excluding all regional leaders, district leaders, salon leaders, guards and supervisors as defined in the Act, and all other employees.

**DIRECTION OF ELECTION**

An Election by secret ballot shall be conducted by the undersigned among the employees in the unit(s) found appropriate at the time and place set forth in the notice of election to be issued subsequently, subject to the Board's Rules and Regulations. Eligible to vote are those in the unit(s) who were employed during the payroll period ending immediately preceding the date of this Decision, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off. Also eligible are employees engaged in an economic strike that commenced less than 12 months before the election date and who retained their status as such during the eligibility period and their replacements. Those in the military services of the United States may vote if they appear in person at the polls. Ineligible to vote are employees who have quit or been discharged for

cause since the designated payroll period, striking employees who have been discharged for cause since the strike began and who have not been rehired or reinstated before the election date, and employees engaged in an economic strike that began more than 12 months before the election date and who have been permanently replaced. Those eligible shall vote whether or not they desire to be represented for collective-bargaining purposes by

**UNITED FOOD AND COMMERCIAL WORKERS  
OF AMERICA, LOCAL 27, AFL-CIO**

**LIST OF VOTERS**

To insure that all eligible voters have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties to the election should have access to a list of voters and their addresses that may be used to communicate with them. *Excelsior Underwear, Inc.*, 156 NLRB 1236 (1966); *N.L.R.B. v. Wyman-Gordon Co.*, 394 U.S. 759 (1969). Accordingly, it is directed that an eligibility list containing the *full* names and addresses of all the eligible voters must be filed by the Employer with the Regional Director within 7 days from the date of this Decision. *North Macon Health Care Facility*, 315 NLRB 359 (1994). The Regional Director shall make the list available to all parties to the election. No extension of time to file the list shall be granted by the Regional Director except in extraordinary circumstances. Failure to comply with this requirement shall be grounds for setting aside the election whenever proper objections are filed.

**RIGHT TO REQUEST REVIEW**

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14th Street, NW, Washington, D.C. 20570-0001. The request must be received by the Board in Washington by **November 8, 1999**.

Dated October 25, 1999

at Baltimore, Maryland

\_\_\_\_\_  
Regional Director, Region 5



1/ The names appear as amended at the hearing.

2/ Creative Hairdressers, Inc., d/b/a/ Hair Cuttery (herein “the Employer” or “the Company”) is a Virginia Corporation engaged in the business of hairstyling at its hair salons located throughout the United States. The Employer operates about 850 salons in nine to ten states, including 105 salons in the State of Maryland. United Food and Commercial Workers of America, Local 27, AFL-CIO (herein “the Petitioner” or “the Union”) filed a petition seeking to represent a unit of all full-time and regular part-time hairstylists at the Employer’s salon located at 6610 Reisterstown Road, Baltimore, Maryland (herein “the Reisterstown salon”). At the hearing, the Union amended its petition to include the assistant salon leaders, keyholders, manicurists, receptionists and shampoo person at the Reisterstown salon. There are approximately 14 employees in the proposed bargaining unit, all of whom are under the authority of a single salon leader. At the hearing, the parties stipulated to exclude regional leaders, district leaders and salon leaders from the bargaining unit.

The Employer contends that a single-salon unit is inappropriate and that an appropriate unit is a statewide unit consisting of the 105 salons located in the State of Maryland, also referred to as “Region 100”. Alternatively, the Employer contends that an appropriate unit consists of 48 salons located in the Baltimore, Maryland area which comprise the “Baltimore DMA” (herein sometimes “the Baltimore DMA unit”), an area designated by the Employer for marketing purposes. The Employer’s proposed statewide unit consists of approximately 1,650 employees while the proposed Baltimore DMA unit consists of about 700 employees. Further, the Employer contends that those individuals classified as “assistant salon leader” are statutory supervisors pursuant to Section 2(11) of the Act and should be excluded from the bargaining unit. As noted above, the Union contends that such individuals do not possess supervisory authority and should be included in the bargaining unit. There is no history of collective bargaining for any of these employees.

### **THE EMPLOYER’S OPERATIONS**

The Employer privately owns all of its 850 salons. The company headquarters is located in Falls Church, Virginia. The salons are grouped into eight regions each of which is overseen by a regional leader. The State of Maryland is designated as “Region 100” and its regional leader is Gail Logue. There are 105 salons located throughout the State of Maryland. A region is broken up into districts each of which is comprised of salons located in a certain geographic area. Each district is overseen by a district sales leader. There are eleven districts located in Maryland. The number of salons located within a district varies between ten and fifteen. The Reisterstown salon is located in “District 5”, which is overseen by district sales leader Judith Tolls. The Baltimore DMA, formerly known as the Baltimore ADI, is an area designated by the Employer for marketing purposes. The Baltimore DMA area is comprised of four districts, including District 5, totaling 48 salons. *The Employer has no management classification designated specifically for the purpose of overseeing the Baltimore DMA area.* The salon leaders in District 5 report to district leader Tolls, who reports to regional leader Logue. Logue reports directly to vice-president of operations Mary Wilson, who reports to the Employer’s president, Dennis Ratner.

The Reisterstown salon employs a salon leader, two assistant salon leaders, a keyholder, ten stylists, a receptionist, a manicurist and a shampoo person. At the time of the hearing, the salon leader and shampoo person classifications were vacant. Cissy Davis served as salon leader until about a week prior to the hearing. Debra Wallin and Villa Wilson serve as the assistant salon leaders. Among the Region 100 salons, only the Reisterstown salon employs a manicurist.

All Region 100 salons operate about 77 hours per week. However, some salons, including the Reisterstown salon, have different operating times based on client flow. Besides providing hair services, the salons also sell retail products. All salons use a uniform pricing list for basic services. There is also a uniform "special design finish price list" for "add-on" or specialty services. However, Union witness Stacy Oaks-Matthews, a sixteen year stylist (fourteen years at the Reisterstown salon), testified that some stylists charge different prices for special hairstyles. The same products are sold in all Region 100 salons and the products come from a centralized distribution system.

Each salon has a computer that is located in the reception area. The computer is used for many purposes including signing in customers, recording employee work hours, tracking stylists' sales and schedules and keeping inventory of supplies and equipment in the salon. The salon leader may override the computer with respect to ordering supplies. The information gathered by the computers in the salons goes directly to headquarters.

Regional leader Logue testified that she visits about nine to twelve salons in her region per week. However, the Union witnesses testified that prior to the Union's organizing campaign, they had not seen Logue in the Reisterstown salon in the past four years. Logue also said that about seven or eight vice-presidents and directors from company headquarters visit salons in Region 100 three times a year to help out in the salons. She said the president also visits salons to help out. In addition, Logue testified that the employee relations representative visits the salons to investigate any EEO issues. The record is silent as to how often the president and employee relations representative visit salons. Stylist Oaks-Matthews testified that she has seen the president visit the salon once and a vice-president once during her entire career with the company.

Logue further testified that district leaders visit about two to three salons per day, four days per week. However, district leader Tolls testified that she visits each salon in her district (13 total) only about once per month and calls the salons about once per day. Tolls stated that she may visit a salon to address an employee issue, review staffing needs with the salon leader, handle inventory concerns and go over current promotions. Tolls further testified that in the last twelve months she visited the Reisterstown salon approximately seven to eight times with each visit lasting anywhere from two to six hours depending on the purpose of the visit. However, the Union witnesses testified that they have only seen Tolls in the Reisterstown salon about five times in the last year and never for more than one hour. Tolls further stated that during the past year she called the Reisterstown salon about three times per week with each call lasting between three to ten minutes. Toll is also accessible to the salons by a pager.

About two years ago, the Employer initiated a new employee orientation program where all new employees receive a "fair treatment" policy, which is the Employer's discipline policy discussed below, a stylist handbook, insurance information, loss prevention standards and an orientation checklist. These documents are produced by the Employer and given to the

employee by the salon leader. The salon leader also administers the orientation checklist to the new employee. This program is implemented in all Region 100 salons.

The salons, as well as headquarters, maintain personnel files. The salon personnel files contain documents such as employee resolution issues, corrective action notices, doctor's slips and customer complaints. Documents retained at headquarters and not at the salon include employee applications, tax withholding forms and life insurance information.

In addition, for the first time this year, the Employer held multi-salon picnics, although the picnic scheduled for the Reisterstown salon was canceled due to the weather. The Employer also has "focus group" meetings which are comprised of employees from various Region 100 salons who provide feedback regarding potential organizational programs. However, stylist Oaks-Matthews testified that she had never heard of such meetings. Also, from about April to June 1999, the Employer experimented with a "retail leader auction" involving four districts, including District 5, which was intended to help retail sales. No one from the Reisterstown salon participated in this program.

### **THE COMPANY'S EMPLOYEES**

A regional leader oversees the salons in a region, works with the district leaders and handles certain personnel matters. The regional leader handles all terminable offenses of employees with less than ten years seniority along with the employee relations representative.

A district leader oversees the salons in a district. A district leader's duties include making staffing recommendations to the salon leader, assisting the salon leader with disciplinary matters and recruiting employees.

The Employer employs the following classifications in a salon: salon leader (previously called salon manager), assistant salon leader (previously called assistant salon manager), hairstylist (herein sometimes "stylist"), keyholder and receptionist. Some salons also employ a shampoo person.

The salon leader is responsible for the day-to-day operation of the salon. The record indicates that salon leaders have the authority to interview potential hires, provide training, provide feedback to employees, and administer disciplinary actions. In addition, the job description of a salon leader reveals that salon leaders hold salon meetings, document daily financials, maintain inventory, payroll and deposits, and manage all banking and cash control policies. Salon leaders set employee work hours and holiday schedule and approve vacation. If an employee calls in sick or absent, he or she must call the salon leader. Salon leaders also have the authority to send an employee home, grant time off and extend an employee's hours without further approval from upper management. They can also recommend to the district leader that employee personal leave requests be approved. Salon leaders initially handle customer complaints and may consult with the district leader regarding complaints. However, the salon leader, assistant salon leader and stylist each can independently issue a refund to an unsatisfied customer. Salon leaders can also recommend that a stylist be promoted to an assistant salon leader position but the district leader interviews candidates and makes the final decision to promote within the district. Salon leaders work about 35 hours per week. Salon leaders who are

on commission spend most of their time doing customers' hair while salaried salon leaders spend about fifty to sixty percent of their time doing hair.

The assistant salon leader assists the salon leader in operating the salon and oversees the salon during the salon leader's absence. The Employer contends that an assistant salon leader assists the salon leader in all supervision functions of the salon including administering certain disciplinary actions, conducting corrective action/counseling sessions and participating in the hiring process. In addition, the Employer contends that assistant salon leaders have the authority to send employees home, grant time off and extend work hours. However, except for issuing disciplinary warnings which is discussed below, there were no examples of the exercise of any the above authority. Assistant salon leaders also work about 35 hours per week and district leader Tolls stated that they are normally scheduled opposite the salon leader. The Employer witnesses testified that assistant salon leaders spend about 90 to 95% of their time doing hair. Regional leader Logue stated that the other 5% is spent opening or closing the salon and counting cash and inventory. Stylist Oaks-Matthews testified that assistant salon leaders spend about 98% of their time doing hair and the other 2% making bank deposits, doing retail sales or cleaning.

A stylist's job duties include shampooing, cutting and styling hair, performing chemical services, cleaning the salon and performing reception work. All stylists in Region 100 must be licensed by the State of Maryland. This license is not valid outside of Maryland. Stylists work about 25 hours a week. Stylists are responsible for providing their own equipment, e.g. dryer, curling irons, combs, brushes, perm rods, clippers, etc. Further, stylists are expected to generate their own clients although the Employer advertises its services as well.

A keyholder is a stylist who has a key to the salon and has the extra responsibility of opening and closing the salon. A keyholder receives \$10 dollars extra per week for this additional duty.

A shampoo person washes hair, washes towels and cleans the salon. If a salon has no shampoo person, a stylist will wash the customer's hair. About seventy percent of shampoo persons become stylists.

A receptionist works at the front desk of the salon, greets clients, signs clients into the salon computer and rings up sales. About sixty percent of the salons in Region 100 have a shampoo person or receptionist.

## **HIRING PROCESS**

The Employer recruits potential employees from beauty schools and stylists also recruit. The district and salon leaders are responsible for staffing the salon. District leader Tolls testified that she spends about thirty percent of her time recruiting employees for her district. Salon leaders conduct interviews, sign-off on applications, review licensing and observe demo haircuts by the applicants. Tolls testified that assistant salon leaders are involved in the hiring process in a similar manner as the salon leader. However, the record is unclear whether their involvement is in lieu of or in conjunction with the salon leader. Before an applicant is hired, the salon leader must contact headquarters to get an employee number. Also, the salon leader must contact

headquarters if the applicant formerly worked for the Employer to verify that the applicant is eligible for rehire. If headquarters denies an applicant, regional leader Logue testified that it is up to the district leader to determine whether to hire the individual. However, ninety-nine percent of applicants who have a license are hired within one to two days of an interview. Tolls testified that almost all of the salons in her district are understaffed, however, no recent examples of any new hires were provided.

### **WAGES AND BENEFITS**

The Employer sets the compensation for Region 100 employees. Some salon leaders are paid a salary while others receive a fifty-five percent commission. For example, a commissioned salon leader would receive fifty-five percent of his/her total sales including retail products and services. About forty percent of salon leaders in Region 100 are paid by commission. A salon leader also receives a monthly bonus based on the sales performance of the salon. This amount could be as much as several hundred dollars per month. Assistant salon leaders are paid a fifty-two percent commission and also receive a monthly bonus based on the sales performance of the salon. The record is unclear as to how much this bonus is but Logue testified that it could be thirty to fifty dollars per month. Stylists in Region 100 are paid minimum wage or fifty percent commission, whichever is greater. New stylists receive forty-five percent commission for ninety days. Stylists do not receive a monthly bonus.

All employees in Region 100 receive the same fringe benefits which are set by the Employer. Stylists receive a vacation bonus (monetary) twice a year based on their length of service with the Employer and their service sales. The Employer also offers health insurance, life insurance, short-term disability and a 401(k) plan to all employees in Region 100. The record is silent as to whether salon leaders and assistant salon leaders also receive these benefits.

### **DISCIPLINE POLICY**

The Employer has a progressive discipline policy called the "fair treatment policy" which applies to all employees. In general, the first step discipline is a verbal warning which is documented in writing; the second step is a written warning and counseling session; and, finally, termination. A verbal warning which is documented in writing (step 1) is the only type of discipline that a salon leader can issue independent of the district leader. In addition, the Employer contends that an assistant salon leader also has the authority to issue a verbal warning without approval from a salon or district leader. The Employer presented evidence of two instances in October 1998 where the Reisterstown salon assistant salon leader Villa Wilson issued verbal warnings to the same employee for failing to call the manager about being absent from work. The Employer also contends that no written warnings (step 2) can be issued without consulting the district leader. Tolls testified that the district leader, salon leader, assistant leader and stylist are present during counseling sessions that take place during the second step. Tolls stated that within the last twelve months, she was involved in one write-up at the Reisterstown salon. Further, all terminations must be approved by the regional leader and an employee relations person except for employees with ten or more years seniority whose terminations must be approved by president Ratner.

## **GRIEVANCES**

The record is unclear whether the Employer has a formal grievance procedure. However, regional leader Logue testified that if employees have a grievance, they go to their salon leader first and if they are unsatisfied with the resolution they can go to the district leader, on up to the regional leader, vice president of operations and ultimately to the president. Logue also stated an employee could go to human resources at any time.

The Employer also introduced evidence regarding "Dear Dennis" cards which are cards that can be used by employees to address complaints directly to the president. These cards are then reviewed by the president or a department head and a response is sent back to the employee.

## **TRAINING**

The Employer also provides various training opportunities that are open to all Region 100 employees. Attendance at these training events is mostly voluntary. The Employer holds educational events three times per year at various locations that are open to all Region 100 employees. The Employer recently held one of these events at a location at Baltimore, Maryland where 80 to 90 percent of Region 100 stylists attended. There are also five regional training centers in Region 100 where training classes are provided three times a week. About 10 to 15 percent of Region 100 stylists attend these classes annually. In addition, there are in-salon training sessions that are open to all employees. In 1999, the Employer held about 560 of these sessions throughout Region 100 which are publicized throughout the salons in a training calendar. Stylist/keyholder Cynthia Foote, a 14 year employee (13.5 years at the Reisterstown salon), testified that within the last year there was only one meeting at the Reisterstown salon that was attended by outside employees.

## **TRANSFERS**

The Employer presented evidence of several transfers involving Reisterstown salon employees. The Employer mainly transfers employees on a voluntary basis. There was evidence of only one involuntary transfer which occurred in February 1999. This employee was temporarily transferred by the Employer to another salon within District 5 for eight hours. All other transfers in or out of the Reisterstown salon were voluntary and most were at the employee's request. Only one permanent transfer was to a salon outside of the district which occurred in September 1999. In June 1999, assistant salon leader Debra Wallin permanently transferred to the Reisterstown salon. Stylist Stacy Oaks permanently transferred to Reisterstown about 14 years ago. Stylist Cynthia Foote permanently transferred to the Reisterstown salon about 13.5 years ago. Eight other employees permanently transferred either in or out of the Reisterstown salon but the record is silent as to the when these transfers occurred. Also at the Employer's request, the receptionist at the Reisterstown salon regularly works one day at Reisterstown and two days at another salon.

Further, the Employer presented extensive documents showing numerous permanent and temporary transfers of employees within Region 100 and within the Baltimore DMA area last year. The Employer also has a "Reach the Beach" program where the Employer solicits



employees from all Region 100 salons to work at the salon located at Ocean City, Maryland for the summer. However, no employees from the Reisterstown salon participated in this program in 1999.

District leader Tolls testified that salon leaders are temporarily transferred to provide coverage at other salons in her district. She said this has occurred about six times in the last four months and recently with the former salon leader at the Reisterstown salon, Cissy Davis, who covered at another salon which had no salon leader. With respect to Davis' transfer, the record is silent as to the date and length of the transfer. District leaders also cover other districts due to vacations and leave of absences and sometimes they switch coverage of salons if a particular salon is having problems. Regional leader Logue testified that this occurs frequently but provided no examples.

### **GEOGRAPHIC PROXIMITY OF SALONS**

The closest salon to the Reisterstown salon is located about 2 to 3 miles away. There are also three other salons located within 5 miles from Reisterstown. The furthest Region 100 salon from the Reisterstown salon is located about 100 miles away. The Baltimore area salons are all located within approximately a 30 mile radius of the Reisterstown salon.

### **EMPLOYER'S POSITION**

#### **1. Scope of Unit**

The Employer argues that a single-store unit is inappropriate here where the salon leader's authority is so severely circumscribed regarding personnel and operational matters that the salon's separate identity has merged into the larger unit of Region 100, or alternatively at the minimum, the Baltimore DMA unit. In addition, the Employer contends that the uniform and centrally administered work, pay, benefits, hours and training militate against a single-store unit over a multi-store unit. In addition, in its brief, the Employer cites that within the last year 192 Region 100 employees temporarily transferred within the region, 118 permanently transferred and 52 simultaneously worked in more than one Region 100 salon. Also, the Employer states that within the Baltimore DMA last year, 81 employees temporarily transferred within the Baltimore DMA area, 47 permanently transferred and 32 simultaneously worked in multiple salons. In arguing that it has overcome the single-store unit presumption, the Employer relies on cases such as Super X Drugs of Illinois, Inc., 233 NLRB 1114 (1977) and Big Y Foods, Inc., 238 NLRB 860, n. 4 (1978).

#### **2. Supervisory status of assistant salon leaders**

The Employer contends that assistant salon leaders are supervisors under the Act and therefore should be excluded from the bargaining unit. The Employer argues that the salon leader is present less than half the time that the salon is open and that the assistant salon leader is in complete charge of the salon during the salon leader's absence. Also, the Employer points out that assistant salon leaders can issue verbal warnings and that they get paid a higher commission and receive a bonus unlike stylists.

## **UNION'S POSITION**

### 1. Scope of Unit

The Union contends that the Employer has failed to overcome the single-store unit presumption arguing that the salon leader at the Reisterstown salon directs the daily operations and labor relations of the salon. The Union points out that the salon leader prepares work schedules and approves vacation, can send employees home, issues verbal warnings, interviews applicants and handles employee grievances and customer complaints. Also, the Union contends that the Employer's salons are distinct profit centers and that the bonus part of the salon leader's compensation is based on the profitability of the salon. Further, the Union argues that the only relevant transfers within Region 100 are the ones involving the Reisterstown salon and that such transfers have been voluntary and minimal.

### 2. Supervisory status of assistant salon leaders

The Union contends that the assistant salon leaders are not supervisors under the Act and share a community of interest with the other stylists. On this point, the Union notes that witnesses testified that assistant salon leaders spend 90 to 98% of their time hairstyling. Also, the Union argues that the bonus received by the assistant salon leader, which is based on the salon's sales, is significantly less than that of the salon leader clearly showing who is in charge of the salon. Further, the Union contends that at the Reisterstown salon, stylists also perform assistant salon leader duties such as opening and closing the salon, making bank deposits and inputting information in the computer.

## **ANALYSIS AND CONCLUSION**

### 1. Scope of Unit

In determining whether to direct an election in a single-facility unit or a broader, multi-site unit, the Board looks at a variety of factors, including bargaining history, centralization of labor relations, and local autonomy and supervision. The Board begins, however, with the presumption that a single location unit is an appropriate unit for collective bargaining. Sentry Security Services, Inc., 230 NLRB 1170 (1977). This is so even where a larger, more comprehensive unit might also be found appropriate. Dixie Belle Mills, Inc., 139 NLRB 629, 631 (1962); Norwest Protective Service, Inc., 124 NLRB 840 (1959). The Board's role is to find "an appropriate unit" and not necessarily "the most appropriate unit." NLRB v. Pinkertons, Inc., 416 F.2d 627, 628 (7th Cir. 1969).

In this regard, although the Board must take into consideration the organizational structure of the Employer's operation, such structure is not controlling. The Board must balance the needs of employee organizational activities against possibly competing interests of an employer. While an employer is entitled to "reasonably adequate protection from the disruptive effects of piecemeal unionization," NLRB v. Pinkertons, Inc., 428 F.2d 479, 485 (6th Cir. 1970), the Board must also "assure to employees the fullest freedom in exercising the rights guaranteed by the Act." Kalamazoo Paper Box Corp., 136 NLRB 134, 139 (1962).

Whether a single-location site is an appropriate unit depends on various factors unique to the particular operation. Among the indicia considered by the Board in determining the unit issue are: the degree of centralized control over hiring, wages, benefits and training; the degree of autonomy and day-to-day managerial responsibility vested in local supervision; the frequency of interchange and transfer of employees among multiple sites, Burns International Security Service, Inc., 257 NLRB 387, 389 (1981); the physical separation or proximity of various sites; and prior collective bargaining history. General Mills Restaurants, Inc., d/b/a Red Lobster, 300 NLRB 908, 910 (1990).

Although no single factor is controlling, the Board's primary focus is on the extent to which a single facility has a "distinct" identity, Sentry Security Services, 230 NLRB at 1171, or evidences a "sufficient separate community of interest." The Wackenhut Corp., 224 NLRB 1142, 1143 (1976). Where employees at a single facility are shown to have interests separate and apart from those at other sites a unit limited to that site will be found appropriate.

The record establishes that the Employer's overall operation of its salons is centralized in several ways. The Employer formulates and centrally administers salon services and prices, employee wages, benefits and training. District leaders recruit employees, are involved in all second step warnings and terminations and decides who to promote within the district. Further, regional leaders and the employee relations representative, and the president in circumstances involving senior employees, approve all terminations. This centralization of administrative functions is a significant factor but, by itself, does not render a single facility "inappropriate" as a unit for collective bargaining. Burns International Security, supra, 257 NLRB at 389.

Notwithstanding the Employer's centralized operations, I find that the single-salon unit sought by the Petitioner is a unit appropriate for collective bargaining purposes. Such factors as centralized administrative control and the geographic proximity of some of the salons to the Reisterstown salon must be evaluated in light of other evidence which firmly supports the presumptive appropriateness of a single-store unit. Hit 'n Run Food Stores, 227 NLRB 1186 (1978), citing Gimbels Midwest, Inc., 226 NLRB 891 (1976). The record reveals that the immediate supervision and day-to-day concerns at the Reisterstown salon are separate and autonomous from the Employer's other salons. In this regard, the salon leader schedules employee work hours, approves sick leave and vacation, handles employee grievances and customer complaints, can send employees home, grant time off and extend an employee's hours without prior approval from the district leader or anyone else from upper management. Although headquarters must be contacted before an applicant is hired, the salon leader conducts the interview and considering that 99% of licensed applicants are hired within one to two days of the interview, it appears that the headquarters' participation in the hiring process is purely administrative. Further, while harsher disciplines are left for the approval of upper management, salon leaders are able to independently issue verbal warnings which are documented and placed in an employee's personnel file, a copy of which is maintained at the salon. See Carter Hawley Hale Stores, 273 NLRB 621 (1984); Renzetti's Market, Inc., 238 NLRB 174 (1978); Buehler's Food Markets, Inc., 232 NLRB 785 (1977).

Although there appear to be frequent transfers between Region 100 salons the transfers involving the petitioned-for salon appear to be minimal and mostly all voluntary. Within the last year, there was only one instance of an involuntary transfer of a Reisterstown stylist and that was a temporary transfer for eight hours. Although several stylists have permanently transferred in or

out of the Reisterstown salon, the record shows that only two occurred within the last year, and all permanent transfers were at the employees' request. Carter Hawley Hale Stores, supra; Renzetti's Market, Inc., supra; Hit 'n Run Food Stores, supra. Indeed, district leader Tolls testified that the Reisterstown salon is generally well-staffed. Further, even though the receptionist at the Reisterstown salon regularly works two days per week at another salon, such interchange by a single employee is insignificant under the total circumstances. Thus, I can not find that the transfers and interchange involving the petitioned-for salon are so significant as to render the single-salon unit inappropriate.

Moreover, although some of the Employer's salons are in close proximity of the petitioned-for salon, minimal employee interchange and lack of meaningful contact between employees at the Reisterstown salon and the Employer's other salons diminishes the short distance between salons. J & L Plate, 310 NLRB 429 (1993). Further, based on the Employer's proposed units, the distance between the Reisterstown salon to another salon would be as far as 100 miles in a statewide unit and 30 miles in a Baltimore DMA unit, significant distances which would favor a single-store unit. See Buehler's Food Markets, Inc., supra, 232 NLRB at 785. Finally, there is an absence of any bargaining history on a broader basis or any request for representation on a broader basis. See Carter Hawley Hale Stores, supra, 273 NLRB at 623; Renzetti's Market, supra, 238 NLRB at 176.

The cases cited by the Employer contain facts which are distinguishable from the instant matter. In Super X Drugs of Illinois, supra, 233 NLRB at 1114, the Board determined that the autonomy of the store manager was severely circumscribed by the district manager. However, the store manager, unlike the salon leader here, could not independently reprimand employees and approve leaves of absence without the district manager's approval, the store manager could only interview for unskilled positions, and the district manager spent more time in the individual stores than does the district leader here. In addition, the multi-store unit found appropriate in that case included only five stores not the 105 or 48 stores sought by the Employer here.

In Big Y Foods, Inc., supra, 238 NLRB at 860, a single-store unit was rejected for a multi-store unit which included three liquor markets. Once again the Board determined that the local managers' authority over their individual stores were severely limited. Similar to the salon leader here, the local manager only had the authority to record oral reprimands. However, the local manager had no involvement in the hiring of employees as does the salon leader here. Also, the division manager visited each market several times a week and sometimes stayed at a particular market an entire day which is significantly more time than what the district leader spends at the salons here.

Therefore, based on the above, I find that the Employer has failed to overcome the presumption that the petitioned for single-store unit is appropriate. In making such determination, I find that the record demonstrates that the petitioned-for salon is run sufficiently autonomous and has a distinct and independent community interest from the Employer's other salons. Accordingly, I will direct an election limited to the petitioned-for salon.

## 2. Supervisory status of assistant salon leaders

In determining whether a person is a statutory supervisor, the Board has held that a person need possess only one of the specific responsibilities listed in Section 2(11). On the other hand,

the application of the Section to the duties and responsibilities of any given person requires that the Board determine whether the person in question has authority to use independent judgment in performing any of the enumerated functions listed in Section 2(11), and to do so in the interest of management. Hydro Conduit Corp., 254 NLRB 433, 437 (1981). As pointed-out in Westinghouse Electric Corp. v. NLRB, 424 F.2d 1151, 1158 (7th Cir. 1970), cited in Hydro Conduit Corp.: "the Board has a duty to employees to be alert not to construe supervisory status too broadly because the employee who is deemed a supervisor is denied employee rights which the Act is intended to protect."

The legislative history of Section 2(11) indicates that Congress intended to distinguish between employees commonly referred to as "straw bosses" or leaders, who may give minor orders and oversee the work of others, but who are not necessarily perceived as part of management, from those supervisors truly vested with genuine management prerogatives. George C. Foss Co., 270 NLRB 232, 234 (1984). The exercise of some supervisory authority in a merely clerical, perfunctory or sporadic manner does not require a finding that an employee is a supervisor within the meaning of the Act. Somerset Welding & Steel, 291 NLRB 913 (1988).

In addition, a party seeking to exclude an individual from voting for a collective bargaining representative has the burden of establishing that the individual is, in fact, ineligible to vote. Golden Fan Inn, 281 NLRB 226, 229-230 fn. 12 (1986). As stated in The Ohio Masonic Home, Inc., 295 NLRB 390, 393 (1989): ". . . in representation proceedings such as this, the burden of proving that an individual is a supervisor rests on the party alleging that supervisory status exists. Tucson Gas & Electric Co., 241 NLRB 181 (1979)." Accord: Dickinson-Iron Agency, 283 NLRB 1029, 1034 (1987) and cases cited therein. Furthermore, ". . . whenever the evidence is in conflict or otherwise inconclusive on particular indicia of supervisory authority, we will find that supervisory status has not been established, at least on the basis of those indicia." Phelps Community Medical Center, 295 NLRB 486, 490 (1989).

The record is insufficient to find that assistant salon leaders are supervisors within the meaning of Section 2(11) of the Act. There is no evidence that assistant salon leaders have the independent authority to hire, transfer, suspend, lay off, recall, promote, discharge, assign or reward employees, or to adjust their grievances, or that they effectively recommend such actions. The Employer contends that in the absence of the salon leader, the assistant salon leader can send employees home, grant time off and extend an employee's hours. However, there is insufficient evidence in the record to find that an assistant salon leader actually possesses such authority. While the Employer presented evidence of two verbal warnings that were issued by assistant salon leader Villa Wilson, both were issued to the same employee for the same minor offense approximately a year ago. No other evidence of an assistant salon leader's authority to discipline employees was presented. I find that such warnings were isolated and are insufficient to confer supervisory authority upon the assistant salon leaders. Indeed, the assistant salon leader's job description states under essential job responsibilities: "Assist Salon Manager in all staff supervision related functions such as . . . documenting all unacceptable behavior according to the Fair Treatment Program (*with the Salon Manager's approval*) . . ." (emphasis added). Surely this suggests that the salon leader is the only individual in the salon who has true authority to discipline employees.

The Employer argues that since a salon leader is normally present in the salon less than half the time the salon is open, and the assistant salon leader is in full charge of the salon during

the absence of a salon leader, the assistant salon leader must be a statutory supervisor. However, there is insufficient evidence that the assistant salon leader exercises supervisory authority during the salon leader's absence. While the absence of supervision is a secondary indicia, standing alone it is insufficient to establish supervisory status. Billows Electric Supply, 311 NLRB 878 (1993).

Significantly, the record is clear that assistant salon leaders spend anywhere from 90 to 98% of their work time doing unit work: hairstyling. Indeed, regional leader Logue, who said that assistant salon leaders do hair about 95% of their time, testified that assistant salon leaders spend the other 5% opening the salon, counting cash, going to the bank, getting change, stocking retail products and inputting information into computer. Such duties are far from supervisory in nature and stylist/keyholder Cynthia Foote testified that she regularly performs similar duties. Thus, the record reveals that the assistant salon leader shares a substantial community of interest with unit employees.

Moreover, stylists are licensed professionals who provide their own equipment, wash their own customer's hair (at the Reisterstown salon) and whose income is directly tied to their own performance. The styling and cutting of hair are at the direction of the customer, not the Employer. Notably, the record indicates that the stylists at the Reisterstown salon average about four to eight years of seniority. Thus, it is unlikely that such professionals would require much supervision as indicated by this record.

The Employer also points out the assistant salon leaders receive a slightly higher commission than stylists (52% to 50% for the stylists) and a monthly bonus which the stylists do not receive. Although an individual's compensation is a factor considered by the Board in assessing supervisory status, it is a secondary indicia and not determinative of the issue. Auto West Toyota, 284 NLRB 659, 662 (1987).

Therefore, based on the above, I find that the Employer has not met its burden in demonstrating that assistant salon leaders are supervisors within the meaning of the Act. Accordingly, I shall include the classification of assistant salon leader in the bargaining unit. Consequently, since I have determined to direct an election in the petitioned-for unit, I find that Villa Wilson and Debra Wallin are non-supervisory employees eligible to vote in the election.

The Employer filed a post-hearing Motion to Supplement the Record by an affidavit of Regional Leader Gail Logue who testified at the hearing. The affidavit purports to contain facts pertaining to Petitioner's alleged organizing efforts at additional Employer salons located in the State of Maryland and Petitioner's alleged plan to file additional petitions at unspecified locations once the instant matter has been decided. A question was raised by the hearing officer as to whether any additional petitions had been filed for any other Employer location and both parties answered in the negative. The Employer contends that the information in its Motion is "a statutorily relevant factor to the Regional Director's evaluation under Section 9(c)(5) of the Act". Petitioner asserts that the motion should be denied.

Section 9(c)(5) provides that, "[i]n determining whether a unit is appropriate [for bargaining] the extent to which the employees have organized shall not be controlling." The provision "was not intended too prohibit the Board from considering the extent of organization as one factor, though not the controlling factor, in its unit determination." NLRB v.

Metropolitan Life Insurance Co., 380 U.S. 438, 442 (1965). The Board violates this provision only “where the unit determined could only be supported on the basis of the extent of organization . . .” Id at 441. Section 9(c)(5) is a limitation on the Board, not the Union. So long as the Board does not give controlling weight to the union’s extent of organization, it is immaterial that such consideration may have guided or influenced the union in filing its petition. Where, as here, there are “ample grounds to support the unit determination, it is irrelevant that the unit sought by the union coincided with the extent of their organizational successes”. See Consolidated Papers, 220 NLRB 1281 (1975); Gerbes Super Market, Inc., 213 NLRB 803, 805 (1974). As there is no support for the assertion that the petitioned-for unit is contrary to Section 9(c)(5), the Employer’s Motion to Supplement the Record is denied.

### **SUMMARY**

In summary, I find the petitioned-for unit, limited to the employees at the Reisterstown salon, is an appropriate unit for the purposes of collective bargaining. Further, I find that the assistant salon leaders are not supervisors within the meaning of the Act and, thus, they are included within the unit and eligible to vote in the election.